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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

INDEPENDENT INK, INC.,

Cross-Petitioner,

v.

ILLINOIS TOOL WORKS INC., *et al.*,

Cross-Respondents.

ON CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CONDITIONAL CROSS-PETITION

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QUESTIONS PRESENTED

Whether the Federal Circuit was correct in affirming the dismissal of Plaintiff's causes of action relating to antitrust conduct, other than straight patent tying, because Plaintiff failed to designate a geographic market.

Whether, under the uncontroverted facts presented, the court should have concluded that Defendants has absolute market power in the patented printhead market, because the Defendants were the only source of supply for printing machines which utilized Defendants' patented printhead technology. The Court therefore should have directed that summary judgment be awarded in favor of Plaintiff without further proceedings.

Whether, under *International Salt Co. v. United States*, 332 U.S. 392 (1947), the presumption of market power in the patented products should be irrebuttable.

STATEMENT PURSUANT TO RULE 29.6

Cross-Petitioner, Independent Ink, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

Cross-Petitioner, Independent Ink, conditionally cross-petitions for writ of certiorari to review the judgment of the Court of Appeals for the Federal Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals for the Federal Circuit is included in the appendix to the petition for writ of certiorari filed by Trident and Illinois Tool Works.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) and Rule 12.5 of the Rules of the Supreme Court and is conditional upon this Court's grant of Petitioners' petition for writ of certiorari.

STATEMENT OF THE CASE

Factual Background. Defendants have a perfect storm of a patent tying monopoly. In addition to the facts set forth by Trident and Illinois Tool Works in their petition, it was uncontroverted that the patented piezoelectric printheads sold by Defendants to manufacturers of printing machines using Defendants' printheads, are manufactured and sold only by Defendants. There are no other suppliers of printheads that will work in those printing machines. It is also undisputed that Defendants' printheads are not used in any equipment other than machines manufactured by Defendants' customers. The ink, which is the tied product, is only useable in machines using Defendants' patented printheads.

Plaintiff also introduced a declaration that Plaintiff and Defendants conduct their business nationwide. Illinois Tool Works is a Fortune 500 company. The printheads are manufactured by Defendants, and sold to original equipment manufacturers ("OEMs") across the country. The consumers of ink and machines are national companies such as General Mills. The appendix is full of documents of Defendants showing their national sales and national market shares. Since Defendants are the only U.S. manufacturer of printheads that will work in the OEM's machines, they clearly have a national monopoly. There is, at least, an issue of fact as to whether Defendants had a national monopoly. Defendants' internal records, which are in the appendix filed with this case in the Court of Appeals for the Federal Circuit, show Defendants' monopoly share, nationwide, of the unique ink used in the unique machines in this case.

Procedural History. The lower court entered summary judgment against Plaintiff on its claims relating to actual monopolization, attempted monopolization and conspiracy. The Court of Appeals for the Federal Circuit affirmed solely on the basis of lack of geographic market. The Court of Appeals for the Federal Circuit also held that the presentation of patent market power was rebuttable.

REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

1) In *International Salt Co. v. United States*, 332 U.S. 392 (1947), the Supreme Court affirmed the granting of summary judgment in favor of Plaintiff Justice Department, solely on the basis of the patent monopoly. The basis, as repeated in numerous decisions, is not only a presumption based on the patent monopoly, but also on the basis that it would be an impermissible extension of the patent monopoly to allow a patent to restrict the sale of non-patented products. This Court has never, as acknowledged by the Court of Appeals for the Federal Circuit, held that the patent market power presumption is rebuttable.

2) It is uncontroverted that there are no substitutes for the patented printheads. Under those facts, it was error for the Court of Appeals for the Federal Circuit to remand this case to allow Defendants another opportunity to find a way around their illegal conduct.

3) The Court of Appeals for the Federal Circuit ignored the plethora of evidence on Plaintiff's other antitrust causes of action and held there was no geographic market designation. Plaintiff submitted an uncontradicted declaration that Plaintiff and Defendants conduct the relevant ink business on a nationwide basis. The Court should also take judicial notice that ITW is a national Fortune 500 company. The appendix is filled with evidence of Defendants' nationwide monopoly share of the ink, the printheads, and the entire piezoelectric market.

CONCLUSION

Plaintiff opposes Defendants' petition for writ of certiorari. Should the Court grant Defendants' petition, then it should address the mistakes made by the Court of Appeals for the Federal Circuit as identified herein.

Respectfully submitted,

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